

REMARKS:

Claims 6-9 are pending in the application for consideration by the examiner. These claims were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. patent No. 4,641,545 of Rabe. This rejection is set forth on page 2 through the top of page 4 of the Official action. The teachings of Rabe were previously cited against applicant's claims, and many of the positions in the outstanding Official action are the same as those previously set forth. In addition, the Official action stated that the construction machine vehicle of Rabe inherently has a driver's seat and a passageway to the driver's seat.

Applicant's claim 9 defines that the locking lever blocks passage through the passageway to the driver's seat when switched to the controllable state and permits passage through the passageway to the driver's seat when switched to the uncontrollable state. The Official action concluded that it would have been obvious to one having ordinary skill in the art at the time the invention was made to locate the locking lever adjacent to a passageway to a driver's seat, since it has been held that rearranging parts of an invention involves only routine skill in the art.

In the present factual situation, applicant respectfully submits that the position that it would have been obvious to one of ordinary skill in the art at the time the invention was made to locate the locking lever adjacent to a passageway to a driver's seat as proposed in the Official action is not correct.

The main reasons for this are that the location of the presently claimed locking lever provides a function and advantage not shown or suggested in the prior art. Even if it is assumed that Rabe teaches the structural parts of applicants claimed invention in a different arrangement (which the applicant does not admit), the rearrangement of parts in an old invention to achieve new functions and advantages has been held to be patentable in the courts. *Rosemount Inc. v. Beckman Instruments, Inc.*, 727 F.2d 1540, 221 USPQ 1 (Fed. Cir. 1984), *In re Wright*, 848 F.2d 1216, 6 USPQ2d 1959 (Fed. Cir. 1988).

As explained in *Wright*, "[t]he determination of whether a novel structure is or is not "obvious" requires cognizance of the properties of that structure and the problems which it solves viewed in light of the teachings of the prior art.... [T]he question is whether what the inventor did would have been obvious to one of ordinary skill in the art attempting to solve the problem upon which the inventor was working." In the present factual situation, the teachings of Rabe do not remotely contemplate the problem of preventing access to the controls of a vehicle, while it is in an active state, by structure where access of the passageway to the driver's seat is blocked by the locking lever when the locking lever is switched to the controllable state (active), but where access of the passageway to the driver's seat is permitted when the locking lever is switched to the uncontrollable state (inactive), as required in the present claims. Since the teachings of Rabe are not concerned with the problems solved by the applicant's allegedly rearrangement of structure or applicants claimed

structure to resolve the problems, the teachings of Rabe could not possibly motivate one of ordinary skill in the art to the arrangement of structure set forth in the present claims.

As explained in *Northern Telecom, Inc. v. Datapoint Corp.*, 908 F.2d 931, 15 USPQ2d 1321 (Fed. Cir. 1990), *cert. denied*, 498 U.S. 920 (1990), the nature of the problem and the inventor's solution are factors that must be considered in determining whether the invention would have been obvious to a person of ordinary skill in the art. Since the teachings of Rabe do not disclose or suggest the problems solved by the applicant or applicant's solution of the problems, namely, preventing access to the controls of the vehicle during its operation by inhibiting access to the driver's seat through the passageway when the vehicle is switched to the controllable (active) state and permitting access to the driver's through the passageway when the vehicle is switched to the uncontrollable (inactive) state, these teachings cannot motivate one of ordinary skill in the art to the invention as set forth in the present claims.

The claimed subject matter as a whole must be compared with the teachings of Rabe. *Wright, In re Ochiai*, 71 F.3d 1565, 37 USPQ2d 1127 (Fed. Cir. 1995). There is no discussion or suggestion within the teachings of Rabe that would have motivated one of ordinary skill in the art to the arrangement of structure set forth in the present claims, including inhibiting access to the driver's seat through the passageway when the vehicle is switched to the controllable (active) state and permitting access to the driver's seat through the

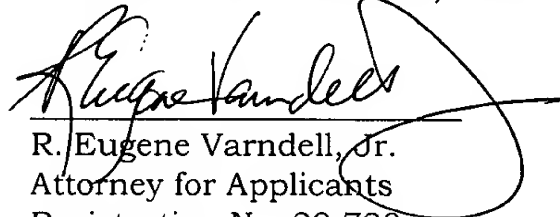
passageway when the vehicle is switched to the uncontrollable (inactive) state. There is simply no reason in the teachings of Rabe to do this. Thus, it is impossible for these teachings to motivate one of ordinary skill in the art to the invention as set forth in the present claims.

Based on the above, applicant respectfully submits that the presently claimed invention is patently distinguishable from the teachings of Rabe within the meaning of 35 U.S.C §103(a). Therefore, applicant respectfully requests that the examiner reconsider and withdraw this rejection. Since it is believed that claims 6-9 are free from prior art, a formal allowance of these claims is respectfully requested.

The foregoing is believed to be a complete and proper response to the Official action mailed December 12, 2003. While it is believed that all the claims in this application are in condition for allowance, should the examiner have any comments or questions, it is respectfully requested that the undersigned be telephoned at the below listed number to resolve any outstanding issues.

In the event this paper is not timely filed, applicant hereby petitions for an appropriate extension of time. The fee therefor, as well as any other fees which become due, may be charged to our deposit account No. 22-0256.

Respectfully submitted,
VARNDELL & VARNDELL, PLLC


R. Eugene Varndell, Jr.
Attorney for Applicants
Registration No. 29,728

Atty. Case No. VX012386
106-A S. Columbus St.
Alexandria, VA 22314
(703) 683-9730

\\V:\VDOCS\W_DOCS\APR04\P0-152-2386 RSAF.DOC